IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.207 OF 2006
in
SUIT NO.1426 OF 1996

1 (a) Shri Shankar Mangla Ladkya Ghatal & ors .. Plaintiff

vs

1. The National & Grindlays Bank Ltd & ors .. Defendants

Mr.D.H.Mehta i/bMr.S.U.Pandey for Plaintiff
Ms.Deepali Bhalekar i/bBilawala & Co for Deft no.1
Mr.P.N.Mody i/b Mr.S.B.Amin for Deft no.2
Mr.N.Pandit for Deft no.3

CORAM : A.S.OKA, J

DATED : 10th September, 2007

P.C.

1. I have heard the submissions of the learned counsel appearing for the parties on Friday 7th September, 2007.

2. The present Chamber Summons is taken out by the plaintiffs for amendment of the plaint. The suit has been filed by the plaintiffs for various reliefs. The first prayer in the suit is that the consent decree dated 15th January, 1970 in Suit No. 54 of 1967 is null and void and is not binding on the plaintiffs. The second prayer is for a declaration that the plaintiffs are the owners and are entitled to possession, use and enjoyment to the exclusion of the defendants of the suit property more particularly described in Exhibit A to the plaint. The plaintiffs have also prayed that the consent decree dated 15th January, 1970 be cancelled and defendants be ordered and directed to

forthwith restore the status quo ante in respect of the right, title and interest of the plaintiffs in respect of the suit properties. A prayer for perpetual injunction is also made along with a prayer for mandatory injunction directing the defendant nos. 3 and 4 to forthwith restore the structures on the suit properties. There is a prayer for a decree of damages in the sum of Rs.50,00,000/-.

3. According to the case of the plaintiffs, the original plaintiff belonged to a tribal community and was the owner of the suit properties. According to them, the original plaintiff was the owner and was otherwise well and sufficiently entitled to the suit properties. The suit property is a land bearing Survey No.234, 239 Part, 228 and 225 Part all situate at village Kurar, Taluka Borivali Bombay Suburban District totally admeasuring 8 acres, 25 gunthas and 11 annas. It is stated that even father of the original plaintiff was in possession of the suit lands. The 1st defendant is a banking company incorporated in United Kingdom which acted as trustees of the 2nd defendant trust. The 3rd defendant is the Conservator of Forest and 4th defendant is the State of Maharashtra. Various assertions have been made in the plaint as regards possession and title of the plaintiffs. It is stated that the 1st defendant in its capacity as trustees of the 2nd defendant filed a suit alleging that father of the plaintiff was employed by the said 2nd defendant

Trust as a watchman and was allowed to use the land bearing survey no.234 and that taking advantage of his position as a watchman, he extended his occupation over survey nos. 234, 228, 239 and 225. It is alleged that a consent decree was obtained in the said suit on 15th January, 1970 by playing fraud. It is contended that father of the original plaintiff was not served with the writ of summons of the said suit. It is contended that the consent decree dated 15th January, 1970 is null and void. Various averments have been made in support of the said contention. A reference has been made in the suit to a Writ Petition being Writ Petition No.1465 of 1975 filed by Nusli Wadia and others against the Conservator of Forests. Reference has been made to the assertions in the said writ petition. It is alleged that on 12th March, 1996 officers of the Forest Department demolished about 45 structures on the suit land. It is alleged that the original plaintiff never authorised any person to hand over the suit property to the forest department. It is alleged that the plaintiff himself never handed over possession of the suit properties to be forest department.

4. By the proposed amendment, the plaintiffs want to rely upon a caste certificate of the father of the original plaintiff and they want to annexe the same to the plaint. The second part of the amendment relates to proceedings of Misc.Petition No.1465 of 1975 and orders passed therein. By the amendment, the plaintiffs are seeking to refer to

and rely upon the affidavit filed by the Dy.Conservator of Forests on 14th August, 2001 in S.C.Suit No.6293 of 1990 in the City Civil Court. According to the plaintiff in the said affidavit there is an admission that the original plaintiff was in possession of a part of the suit property. The plaintiff wants to rely upon the correspondence made during the pendency of the suit. A reliance is also sought to be placed on an order dated 15th April, 2005 of the Collector of Bombay Suburban District. A prayer for interim relief is also sought to be added by the proposed amendment.

5. The submission of the learned counsel for the plaintiffs is that the proposed amendment will not change the nature of the suit and the same is necessary for effectively adjudicating the dispute involved in the suit. The Chamber Summons is opposed by learned counsel appearing for the 3rd and 4th defendants by pointing out that the averments sought to be added by clauses III and and IV of the text of the amendment will change the nature of the suit. The same are the submissions of learned counsel appearing for the 1st and 2nd defendants. Learned counsel for the 1st and 2nd defendants submitted that if the proposed amendment is allowed, the plaintiffsmay contend that the property allowed to be retained by the 1st and 2nd defendant under orders passed in Misc.Petition No.1465 of 1975 should be now be treated as a forest land.

6. I have carefully considered the submissions. The learned counsel for the plaintiffs relied upon the decision of the apex Court in the case of Rajesh Kumar Aggarwal & ors vs K.K.Modi & ors (AIR 2006 Supreme Court 1647.) In paragraph 19 and 20 of the said decision, the Apex Court has held as under :

> " 19. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decision of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.
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> 20. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case. "

7. Turning to clause I of the Schedule of this Chamber Summons, the plaintiffs wants to rely upon the caste certificate issued in the name of the father of the plaintiffs. The plaintiffs have

already pleaded that father of the original plaintiff was a tribal. Therefore, the plaintiff can always lead evidence by producing the certificate in evidence and hence, it is not necessary to allow the said part of the amendment. By clause II of the Schedule, reliance is sought to be placed on certified copy of Misc. Petition No.1465 of 1975. It is stated that the plaintiffs desires to annexe a copy of the said petition.

8. In clause III of the Schedule, the plaintiffs desires to rely upon the avermnents made in the Misc. Petition and on the consent terms filed in the said Misc. Petition. The plaintiffs desire to refer to order dated 15th March, 2005. The plaintiff want to contend that by virtue of subsequent events, now the claim of the forest department does not survive as regards possession of the suit properties. This amendment does not change the nature of the suit. Therefore, the amendment in terms of clause III of the Schedule will have to be allowed.

9. In so far as clause IV of the Schedule is concerned, various facts are pleaded on the basis of the orders passed by various officers of the Forest Department and by the Collector. The plaintiff want to refer to the correspondence made during the pendency of the suit. It is not necessary to go into the truth of the said averments sought to be incorporated. It cannot be said that the averments are irrelevant. By

incorporating the said averments, the nature of the suit will not be changed. Therefore, amendment will have be permitted in terms of clause IV of the schedule.

10. Turning to clause V, the plaintiff want to add certain averments in support of a prayer for interim relief which is sought to be added by clause VI of the Schedule. If the plaintiffs want to claim any interim relief they will have to take out appropriate proceedings for making out a case for grant of interim relief and for that purpose amendment to the plaint need not be allowed.

11. Hence, Chamber Summons must partly succeed in part. Accordingly, the same is made absolute in terms of prayer clause (a) in so far as clause Nos. nos. II, III, and IV of the Schedule to the Chamber Summons are concerned. Rest of the prayers in the Chamber Summons are rejected. However, it is always open for the plaintiffs to take out appropriate proceedings for grant of interim reliefs.

12. Amendment to the plaint shall be carried out within four weeks. Obviously after carrying out the amendment, a copy of amended plaint will be served on the defendants who will be entitled to file additional written statement within 8 weeks from the date of service of the amended plaint.

Parties to act on an authenticated copy of this order.

(A.S.Oka, J)